

**LEGISLATIVE SERVICES AGENCY
OFFICE OF FISCAL AND MANAGEMENT ANALYSIS**

200 W. Washington, Suite 301
Indianapolis, IN 46204
(317) 233-0696
<http://www.in.gov/legislative>

FISCAL IMPACT STATEMENT

LS 6539

BILL NUMBER: SB 213

NOTE PREPARED: Dec 29, 2009

BILL AMENDED:

SUBJECT: Unauthorized Aliens.

FIRST AUTHOR: Sen. Delph

FIRST SPONSOR:

BILL STATUS: As Introduced

FUNDS AFFECTED: X GENERAL
X DEDICATED
X FEDERAL

IMPACT: State & Local

Summary of Legislation: *Department of Correction (DOC):* This bill requires the Department of Correction to: (1) evaluate the citizenship and immigration status of a committed offender; and (2) notify and assist the United States Department of Homeland Security under certain conditions.

Flight Risk: The bill provides that the fact that a defendant is a foreign national not lawfully admitted to the United States is a fact relevant to the risk of nonappearance a judicial officer must consider in setting bail.

County Sheriff: The bill requires a sheriff to make a reasonable effort to determine the citizenship or immigration status of certain persons confined in a county jail.

Safe Harbor Provisions: This bill prohibits a governmental body from enacting an ordinance, resolution, rule, or policy that prohibits or limits another governmental body from sending, receiving, maintaining, or exchanging information on the citizenship or immigration status of an individual. It also allows a person to bring an action to compel a governmental body to comply with the prohibition.

Department of Workforce Development (DWD): The bill requires the Department of Workforce Development to verify through the Systematic Alien Verification for Entitlements (SAVE) program the lawful presence of certain individuals who apply for unemployment benefits.

Contracting Requirement: This bill requires a state agency or political subdivision to verify employees through the E-Verify program. It prohibits a state agency or political subdivision from entering into or renewing a public contract for services with a contractor unless the contract requires the contractor to verify employees through the E-Verify program. The bill provides that: (1) a state agency or political subdivision

may terminate a public contract for services under certain conditions regarding the knowing employment or retention of unauthorized aliens; and (2) if a public contract for services is terminated, a contractor is liable for actual damages. It also allows a contractor of a public contract for services to terminate a contract with a subcontractor if the subcontractor employs or contracts with unauthorized aliens.

Penalty Provisions: This bill increases penalties for certain crimes. It also establishes additional penalties for certain crimes. The bill adds the following penalty provisions:

- (1) Knowingly or intentionally offering in writing, accepting, or recording a consular identification for any public purpose is a Class C infraction;
- (2) Knowingly or intentionally offering in writing, accepting, or recording an individual taxpayer identification number as a valid form of identification for any public or private purpose commits is a Class C infraction;
- (3) Making a false identity statement is a Class A misdemeanor;
- (4) Making or distributing a forged instrument is a Class C felony;
- (5) Knowingly or intentionally making, with the intent to distribute, a document that is not issued by a government entity and that purports to be a government-issued identification is a Class C felony;
- (6) Knowingly or intentionally transporting or moving an alien is a Class A misdemeanor; and
- (7) Knowingly or intentionally concealing, harboring, or shielding an alien from detection, for purposes of commercial advantage or private financial gain, knowing or in reckless disregard of the fact that the alien has come to, entered, or remained in the United States in violation of law is a Class A misdemeanor.

Effective Date: July 1, 2010.

Explanation of State Expenditures: *Summary:* *Contracting Provisions:* This bill affects public employers as well as state contracting agencies by requiring state agencies to verify the work eligibility status of all employees hired. The bill also limits public contracting by requiring that a contractor or subcontractor verify the work eligibility status of employees as a condition of receiving a contract award. Requiring contracted employers to verify the work eligibility status of employees may increase state expenditures on contracts if submitted requests for proposal cost estimates increase to reflect any change in hiring practices and/or wages paid by contractors. Increases in contracting expenses to the state are indeterminable.

Department of Correction (DOC): The bill requires DOC staff to (1) verify the legal presence of all individuals incarcerated in DOC facilities and (2) contact the U.S. Department of Homeland Security if an individual's citizenship status is unable to be verified. Additionally, the bill requires DOC to work with the U.S. Department of Homeland Security in deporting committed offenders who are unlawfully present in the United States.

Penalty Provisions: The bill also establishes new penalty provisions and modifies currently existing provisions. To the extent these changes increase the number of offenders held in state correctional facilities, state expenditures will increase.

[*Note:* This fiscal note does not include a secondary analysis of the potential effects stricter enforcement of unauthorized immigration law may have on state expenditures.]

Additional Information:

Systematic Alien Verification for Entitlements (SAVE) System Use for Unemployment Benefits: Under the bill, the Department of Workforce Development (DWD) is required to use the SAVE program to verify individuals who are not citizens or nationals of the United States as a condition of receiving unemployment benefits. Currently, DWD processes all applicants for unemployment benefits through the SAVE program. Fees associated with SAVE verification are paid by DWD.

Department of Correction (DOC): Currently, DOC verifies the legal status of offenders committed to their facilities. This is done in part to apply for expense reimbursement under the State Criminal Alien Assistance Program (SCAAP). DOC reports that they currently notify ICE and the U.S. Social Security Administration (SSA) when a determination has been made that an offender is illegally present in the United States.

The bill's requirements represent an additional workload [and/or expenditure] on the agency outside of the agency's routine administrative functions, and existing staffing and resource levels, if currently being used to capacity, may be insufficient for full implementation. The additional funds and resources required could be supplied through existing staff and resources currently being used in another program or with new appropriations. Ultimately, the source of funds and resources required to satisfy the requirements of this bill will depend on legislative and administrative actions.

DOC reports there were 442 suspected unauthorized aliens in DOC facilities in SFY 2008. As of November 2, 2009, 93 of these offenders are still held in DOC facilities. The per diem cost to house these individuals was calculated at \$55.33. Total annual costs to DOC to house the 442 unauthorized aliens during FY 2008 were approximately \$8.9 M. The costs of maintaining the remaining 93 unauthorized alien criminal offenders is approximately \$1.9 M per year.

Public Employer and Public Contractor Provision: The bill states that contractors are liable to the contract-issuing state agency or political subdivision for any damages that may result from a contract cancellation due to the illegal employment of unauthorized aliens. This provision will minimize any increase in expenditures that may result from the cancellation of a contract. To the extent that a contractor challenges the contract cancellation, the workload of the respective state agency and the Attorney General may increase to defend the state.

The E-Verify program is a free Internet-based system that allows employers and state agencies to verify the legal working status of new hires in seconds. Requiring state agencies and state contractors to use the E-Verify system will not increase state expenses, but will slightly increase workload to ensure all employees hired after the effective date are processed. Increases in workload are expected to be minimal due to the processing time necessary for requests.

Penalty Provisions: The bill makes the following changes to penalty provisions in current law:

- (1) Counterfeiting or falsely reproducing a driving license with the intent to misrepresent citizenship or immigration status, a Class C felony.
- (2) Knowingly or intentionally offering in writing, accepting, or recording a consular identification for any public purpose commits a Class C infraction, but this offense can be a Class B infraction for a second offense or a Class A infraction for a third or subsequent offense.
- (3) Knowingly or intentionally offering in writing, accepting, or recording an individual taxpayer identification number as a valid form of identification commits a Class C infraction for the first offense, a Class B infraction for a second offense, or a Class A infraction for a third or subsequent offense.
- (4) Making or distributing a forged instrument, a Class C felony.

- (5) Knowingly or intentionally making a false government document, a Class D felony.
- (6) Knowingly or intentionally making a false government document with the intent to distribute, a Class C felony.
- (7) False identity statement, a Class A misdemeanor.
- (8) Transporting an illegal alien, a Class A misdemeanor; however, the offense is a Class D felony for a previous conviction and a Class C felony for a third or subsequent conviction.
- (9) Harboring an illegal alien, a Class A misdemeanor; however, the offense is a Class D felony for a previous conviction and a Class C felony for a third or subsequent conviction.

Additionally, the bill adds that persons who uses false or fictitious information also commit terroristic deception. The bill changes the penalty for terroristic deception from a Class C felony to a Class B felony. It should be noted that state expenditures would increase if an offender is incarcerated in a state prison for a longer period of time due to the penalty enhancements for this offense.

Depending on mitigating and aggravating circumstances, these offenses carry the following penalties: (1) a Class D felony is punishable by a prison term ranging from 6 months to 3 years or reduction to Class A misdemeanor, (2) a Class C felony is punishable by a prison term ranging from 2 to 8 years, and (3) a Class B felony is punishable by a prison term ranging from 6 to 20 years. The average length of stay in DOC facilities by offense are as follows: (1) Class D felony offenders, approximately 10 months, (2) Class C felony offenders, approximately 2 years, (3) Class B felony offenders, approximately 3.7 years.

The average expenditure to house an adult offender was \$20,194 in FY 2009. (This does not include the cost of new construction.) If offenders can be housed in existing facilities with no additional staff, the marginal cost for medical care, food, and clothing is approximately \$4,818 annually, or \$13.20 daily, per prisoner.

Background Information on SAVE Program and Associated Fees: In 2003, under the Immigration Reform and Control Act of 1986 (IRCA), the U.S. Department of Homeland Security was required to establish a system for verifying the immigration status of noncitizen applicants for certain types of federally funded benefit programs (including Unemployment Compensation), and to make this system available to federal, state, and local benefit-issuing agencies and institutions that administer such benefits. IRCA mandates overseeing agencies to participate in the verification of an applicant's immigration status.

As enacted by the federal government, effective October 1, 2008, a uniform rate of \$0.50 will apply to each SAVE request submitted electronically, with an additional \$0.50 charge if the case is referred for additional verification. A rate of \$2.00 will apply to each initial manual verification request submitted via the paper-based form.

Explanation of State Revenues: *Court Fee Revenue:* To the extent that contractors and subcontractors feel that their contracts have been wrongfully terminated, additional civil actions may be filed. Additionally, if the Department of Labor verifies that an employee has been wrongfully terminated for reporting labor violations, additional civil actions may also be filed. If additional civil actions occur and court fees are collected, revenue to the state General Fund may increase. A civil costs fee of \$100 would be assessed when a civil case is filed, 70% of which would be deposited in the state General Fund if the case is filed in a court of record or 55% if the case is filed in a city or town court. In addition, some or all of the document storage fee (\$2), automated record keeping fee (\$7), judicial salaries fee (\$18), public defense administration fee (\$3), court administration fee (\$5), and the judicial insurance adjustment fee (\$1) are deposited into the state General Fund. Additional fees may be collected at the discretion of the judge and depending upon the

particular type of case.

Penalty Provisions: If additional court cases occur and fines are collected, revenue to both the Common School Fund (from fines) and the state General Fund (from court fees) would increase. Judgments for infractions are deposited into the state General Fund.

The maximum fines by offense are as follows: (1) a Class A misdemeanor is \$5,000, (2) a Class B misdemeanor is \$1,000, (3) Class B, C, and D felonies are \$10,000, (4) a Class C infraction is \$500, (5) a Class B infraction is \$1,000, and (6) a Class A infraction is \$10,000.

[*Note:* This fiscal note does not include a secondary analysis of the potential effects stricter enforcement of unauthorized immigration law may have on state revenue.]

Background Information: Under the federal State Criminal Alien Assistance Program (SCAAP), the federal government reimburses part of state and local expenditures incurred for correctional officer salary costs for incarcerating undocumented criminal aliens. During FFY 2009, the DOC received a total of \$1,148,637 in SCAAP funds.

Explanation of Local Expenditures: *Public Employer and Public Contractor Provision:* (See also *Explanation of State Expenditures*, above.) To the extent that contractors and subcontractors feel a contract was wrongfully terminated and seek civil redress, local expenditures would increase to defend their interests in court.

Sheriffs: The provisions will increase the workload of local sheriffs to the extent they detain felony offenders and individuals who operate a vehicle while intoxicated in a county jail. The increase in workload is indeterminable.

Penalty Provision: A Class A misdemeanor is punishable by up to one year in jail and a Class B misdemeanor is punishable by up to 180 days in jail. If more defendants are detained in county jails prior to their court hearings, local expenditures for jail operations may increase.

[*Note:* This fiscal note does not include a secondary analysis of the potential effects stricter enforcement of unauthorized immigration law may have on local expenditures.]

Explanation of Local Revenues: *Court Fee Revenue:* If additional civil actions occur, local governments would receive revenue from the following sources. The county general fund would receive 27% of the \$100 civil costs fee that is assessed in a court of record. Cities and towns maintaining a law enforcement agency that prosecutes at least 50% of its ordinance violations in a court of record may receive 3% of court fees. If the case is filed in a city or town court, 20% of the court fee would be deposited in the county general fund and 25% would be deposited in the city or town general fund. Additional fees may be collected at the discretion of the judge and depending upon the particular type of case.

Penalty Provision: If additional court actions occur and a guilty verdict is entered, local governments would receive revenue from court fees.

[*Note:* This fiscal note does not include a secondary analysis of the potential effects stricter enforcement of unauthorized immigration law may have on local revenue.]

Background Information: Under the federal State Criminal Alien Assistance Program, the federal government reimburses part of state and local expenditures incurred for correctional officer salary costs for incarcerating undocumented criminal aliens. SCAAP payments are calculated using a formula that provides a relative share of funding to jurisdictions that apply and is based on the number of eligible criminal aliens as determined by the U.S. Department of Homeland Security. SCAAP payments made to applicants are received as a prorated payment based on costs submitted and qualifying inmates detained. All SCAAP payments must go to a jurisdiction's general fund.

The counties that received payments from the SCAAP program in FFY 2009 and the total amounts received are shown in Table A. For FFY 2008, Indiana counties received \$196,332 from the SCAAP program.

Table A: 2009 County SCAAP Awards	
County	Amount Received
Allen	\$38,592
Cass	\$7,854
Grant	\$6,420
Hamilton	\$24,030
Hendricks	\$10,502
Johnson	\$7,719
Marion	\$75,402
Noble	\$11,340
Porter	\$2,486
Total	\$184,345

State Agencies Affected: All.

Local Agencies Affected: All.

Information Sources: Tim Brown, DOC; Indiana Sheriff's Association; ICE; Matt Light and Tom Bodin, Office of the AG; Captain Sherry Beck, ISP; Sean Keefer, DOL; Joshua Richardson, DWD.

Fiscal Analyst: Bill Brumbach, 232-9559.